

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT CHARLES TAYLOR,

Defendant.

Case Number 05-20052-BC
Honorable Thomas L. Ludington
Magistrate Judge Charles E. Binder

**ORDER OVERRULING PARTIES' OBJECTION TO MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION, ADOPTING REPORT AND
RECOMMENDATION, GRANTING DEFENDANT'S MOTION TO SUPPRESS, AND
SUPPRESSING EVIDENCE**

Presently before the Court is a report issued by Magistrate Judge Charles E. Binder on February 6, 2007 recommending that the defendant's motion to suppress be granted and evidence resulting from that search be suppressed. Thereafter, the parties filed timely objections to the report and recommendation. The defendant largely concurred in the magistrate judge's suggestion that the search warrant affidavit lacked probable cause on its face, but asserted that the evidence also could be suppressed under *Franks v. Delaware*. The government contended that probable cause was present under a totality of the circumstances because the basis for the information contained in the search warrant affidavit was supported by statements of a reliable citizen informant. The Court has conducted a *de novo* review of the record in light of the parties' submissions, the transcript of proceedings held before the magistrate judge, and heard oral argument on March 20, 2007.

At the conclusion of the hearing, the Court determined that magistrate judge reached the correct result. The Court found that information supporting the credibility of informant, Richie Spear, should have been included in the search warrant affidavit. Without such information, it was

not possible for reviewing magistrate in this case to make a meaningful determination as to the presence of probable cause that the coins listed in the search warrant likely would be found in the defendant's residence. However, the Court disagreed that the alleged acts or omissions of law enforcement officers executing the warrant required suppression under *Franks*. After a review of the record, including a transcript of an evidentiary hearing conducted by Magistrate Judge Charles E. Binder, the Court was unable to discern instances that called the affiant's intent to mislead the reviewing magistrate into question or that the affiant recklessly provided such information in order to obtain a warrant.

Accordingly, it is **ORDERED** that the government's objections to the report and recommendation [dkt # 21] are **OVERRULED**, the defendant's objections to the report and recommendation are **OVERRULED**, the magistrate judge's report and recommendation [dkt # 20] is **ADOPTED**, and the defendant's motion to suppress [dkt # 12] is **GRANTED**.

It is further **ORDERED** that evidence seized as the result of the deficient search warrant is **SUPPRESSED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: March 20, 2007

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 20, 2007.

s/Tracy A. Jacobs
TRACY A. JACOBS